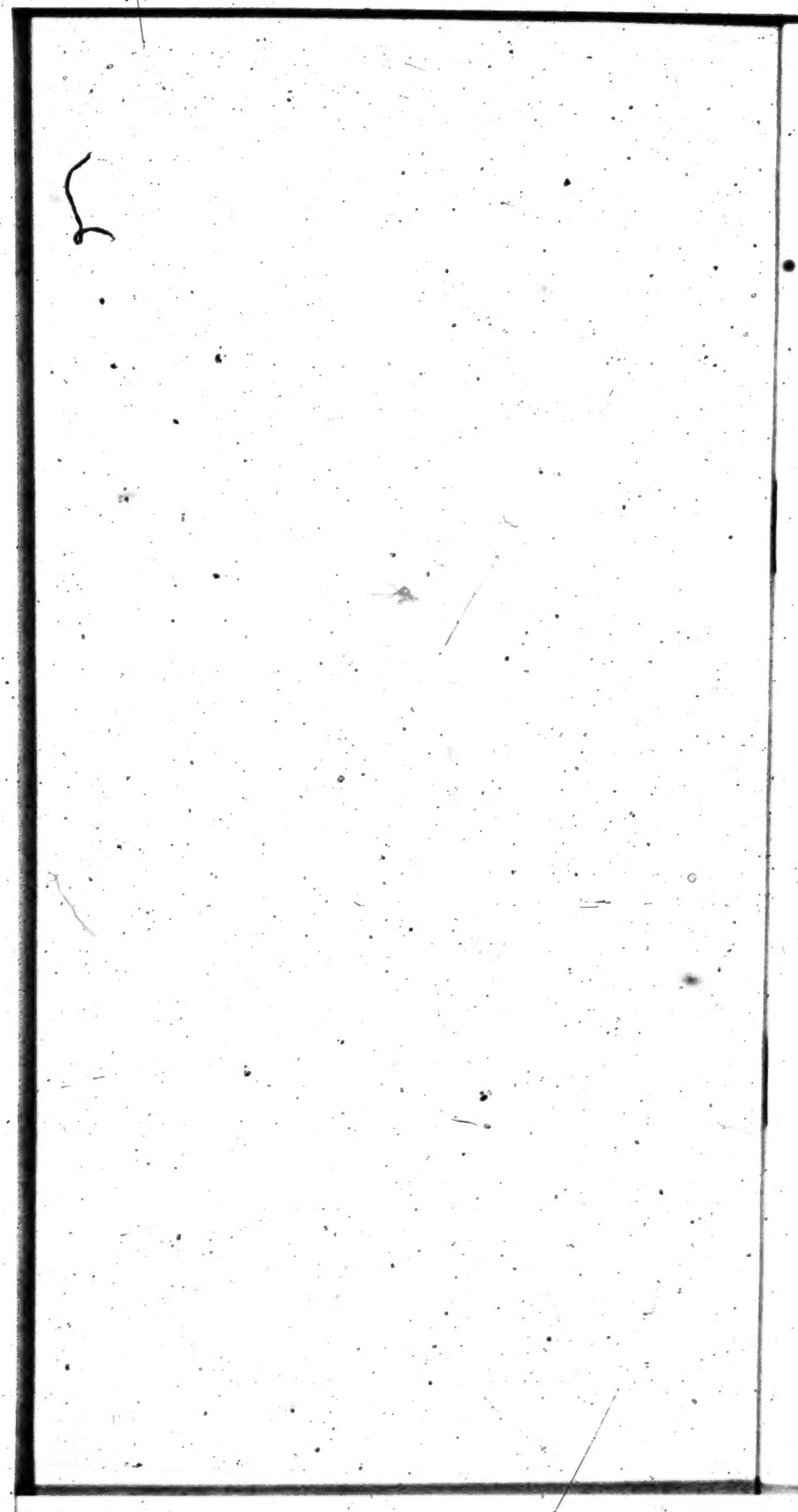

IN THE SUPREME COURT OF THE UNITED STATES

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, et al,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

70-78

No. ~~1991~~

ANITA REYOS, et al,
Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,
Respondents.

October Term, 1970

BRIEF OF RESPONDENT VERL HASLEM OPPOSING PETITION FOR WRIT OF CERTIORARI

HARDIN A. WHITNEY
O. WOOD MOYLE III
800 Deseret Building
Salt Lake City, Utah 84111

Attorneys for
Respondent Verl Haslem

IN THE SUPREME COURT OF THE UNITED STATES

AFFILIATED UTE CITIZENS OF THE STATE OF UTAH, et al,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

ANITA REYOS, et al,
Petitioners,

vs.

FIRST SECURITY BANK OF UTAH, N.A., UNITED STATES OF AMERICA, JOHN B. GALE AND VERL HASLEM,
Respondents.

No. 1331

October Term, 1970

BRIEF OF RESPONDENT VERL HASLEM OPPOSING PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

This brief is submitted on behalf of respondent Verl Haslem in opposition to the Petition of the Affiliated Ute Citizens of the State of Utah and Anita Reyos, et al for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit.

In actuality, the petitioners have joined together for this purpose two separate and distinct cases, only one of

which pertains to Haslem. The first case, *Affiliated Ute Citizens of the State of Utah v. the United States of America* (431 F.2d 1349 (1970)) (herein "the AUC case") seeks the remedy of having certain properties distributed pro rata to the individual mixed blood members of the Ute Indian Tribe rather than to a corporation formed to receive it. The second case, *Anita Reyos, et al v. First Security Bank of Utah, N. A., the United States of America; John B. Gale and Verl Haslem* (431 F.2d 1337 (1970)) (herein "the Reyos case") claims damages on behalf of certain enumerated mixed bloods. That case is in reality divided into three claims: The first is a claim against the United States under the federal Tort Claims Act 28 U. S. C. § 1346 (b)) by which plaintiffs say that the government negligently failed to protect the mixed bloods in breach of an alleged duty to do so; the second is a claim against the bank for breach of an alleged fiduciary relationship; and the third consists of claims against the bank, Haslem and Gale based upon an alleged violation of Sec. 10(b) of the Securities Exchange Act of 1934 (15 U.S.C. § 78j(b)) and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission (17 CFR 240.10b-5).

In the AUC case it is claimed by the petitioners that the Termination Act (68 Stat. 868, 25 U.S.C. §§677-677aa), under which the United States government's obligation to oversee the welfare of the affected plaintiffs is delineated, has been improperly administered. It appears from the opinion of the Court of Appeals that that case was dismissed for lack of jurisdiction in that the Trial Court had apparently so ruled and the Court of Appeals affirmed. The issues presented in that case, whatever they may be, have no bearing on the bank, Gale or Haslem; we

wish to note that Haslem takes no position with respect to the Petition for Writ of Certiorari in the AUC case.

Petitioners in the Reyos case claim that the Termination Act, supra, also created a duty in the United States with respect to the sale of stock in the Ute Distribution Corporation by the mixed bloods, the claimed breach of which is actionable under the Tort Claims Act. The Court of Appeals held that the Termination Act created no such duty.

Petitioners in the Reyos case also claim that because the bank was a trustee for certain named mixed bloods and also acted as transfer agent for the stock of the Ute Distribution Corporation, the bank owed a fiduciary duty to all of the mixed bloods as well, which duty the bank breached. The Court of Appeals disagreed and ruled that the bank owed no duty by virtue of those agreements except the express duties created by their terms (431 F. 2d 1337 at 1344-45).

Finally, the last claim, against the bank and the individual defendants, the only claim presented against this Respondent, is predicated upon charges of conspiracy and violations of the securities law as above noted. As to those claims, the Court of Appeals has ruled that the evidence does not support a finding of conspiracy and has remanded the proceedings to the United States District Court for the District of Utah to determine, among other things, the extent, if any, of the individuals' liability for violation of the securities laws. Such liability was properly limited to the impact of the defendants' own actions and the Court of Appeals did not allow defendants' liability to be expanded to encompass all sales of stock by the mixed bloods, whether or not the individuals were involved in that particular transaction.

ARGUMENT

It is difficult to see how the Appellate Court's straight-forward analysis of the evidence presented on these issues comes within any of the criteria enumerated in this Court's Rule 19 1 (b).

Petitioners have claimed with respect to the alleged securities violation that this case is one of "National concern" because the Court of Appeals "has chosen to circumscribe the scope of liability under Rule 10b-5 without an inquiry into whether the substance of the transaction is within the policies Congress declared in adopting the securities laws." Petition page 24.

This claim is wholly without merit. The Court of Appeals held that the individuals and the bank might be liable under the securities laws but only for those transactions in which it could be shown that they were involved. This was so because the court found that there was no evidence of a conspiracy but that there was an indication that the defendants might be liable for isolated instances of conduct. Though petitioners state otherwise, there was no suggestion whatever in the Court's opinion, articulated or otherwise, that in an appropriate case banking transactions would not be covered by the Securities Exchange Act of 1934. The Court simply held that the standard by which a violation of the securities laws as opposed to laws directly related to Indian affairs should be measured is no different in the event parties are Indians or mixed bloods than otherwise.

Insofar as the position of the bank and the individual defendants are concerned, the Court of Appeals' opinion is a straightforward lawyer-like ruling disposing of the issues as tried and is of little or no national moment. The

issues do not bring into play any question of national import not previously determined, the rulings of the Court of Appeals in the Reyos case are not in conflict with any rulings of any other Court of Appeals in any material respect and the case does not meet any of the other criteria for granting a Writ of Certiorari as set forth in this Court's rules.

CONCLUSION

Based on the foregoing, it is submitted that the Petition for Writ of Certiorari, at least in the Reyos case, should be denied because none of the required elements presented by it are of a sufficient concern to occupy the energy of this Court. If the Petition is granted, at all, it is clear that the issues should be limited solely to those pertaining to the meaning and application of the Termination Act.

Respectfully submitted,

HARDIN A. WHITNEY
O. WOOD MOYLE III
800 Deseret Building
Salt Lake City, Utah 84111
Attorneys for Respondent Verl Haslem